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OF COUNSEL
D. FRANK WILKINS

CONFIDENTIAL

December 18, 1998

Marianne Abely
Office of General Counsel
Federal Election Commission
999 E. Street N.W.
Washington, D.C. 20463

Re: MUR 4621

Dear Ms. Abely:

This is in response to your requests for additional information regarding Congressman Merrill Cook ("Cook") and the Merrill Cook for Congress Committee's ("Cook Committee") dealings with R.T. Nielson Company ("RTN") and Phillips, Twede, Spencer ("PTS") during the 1996 campaign season.

As I indicated to you in my November 3 and 6, 1998 letters, information you requested regarding dealings with PTS would have to come from Congressman Cook. He has submitted responses to your requests which I will relay.

First, you requested information regarding whether Cook and the Cook Committee paid PTS' subcontractors directly or whether they paid PTS for subcontracted work. Cook responds that he believes that the Cook Committee paid PTS for subcontracted work in most cases but possibly paid some of PTS' subcontractors directly.

Second, you requested identification of payments which represented prepayments or estimates of expenses for media spots. Cook responds that almost every check to PTS or Media Max for radio or television media spots were prepayments or estimates of expenses since all radio and television stations received prepayments and then reconciliations were made after the election.

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Third, you asked about an August 9, 1996 letter to Cook from Ted Phillips which references a payment plan. Specifically, you wanted to know whether the payment plan went into effect and if so, what services were to be paid for under such plan and what checks went to make the payments. Cook responds that to his recollection, the payment plan referenced in the August 9, 1996 letter was not put into effect.

Fourth, you requested information regarding an undated memorandum to Ted Phillips from Cook which proposes a payment plan. Cook responds that to the best of his recollection, that proposed plan was likewise not put into effect. Nevertheless, Cook states, the amounts owed to PTS both before and after the election were paid.

Finally, you requested an explanation of when expenses were incurred for services under the ongoing agreement with PTS. Cook responds that the best explanation of when expenses were incurred for services is at the time the checks were given to PTS for such services. Cook states that to his recollection, PTS usually seemed to require payment at or before the time the actual expense to it was incurred. Cook further states that to the best of his knowledge, PTS would rarely, if ever, pay a subcontractor for work done for Cook and the Cook Committee until PTS received money from the Cook Committee.

You also asked about Cook and the Cook Committee's dealings with RTN during the 1996 campaign. First, you wanted to know if invoice numbers 96173 and 96356 for get-out-the-vote telephone calls were paid, and if so, when they were paid. These invoices were paid by the Cook Committee, even though no check from the Cook Committee to RTN makes reference to these invoices. As I explained in my October 30, 1998 letter to you, the Cook Committee intended to pay RTN what was owed under the Services Agreement with RTN and no more. With check numbers 212, 215, 216, 217, 227, 232, 246, 252 and 263, the amounts of which total \$60,500, Cook and the Cook Committee intended to pay RTN for services performed under the Services Agreement, including get-out-the-vote telephone calling, for which they did not pay with other checks. The dates of the above-referenced checks are September 5, 16, 18 and 19, and October 1, 7, 15, 21 and 29, 1998, respectively.¹ The fact that these checks note invoice numbers 96199 and 96200 is of no moment.

¹ To the extent that RTN performed services under the Services Agreement after the last check to RTN, such services were paid for in advance. Cook and the Cook Committee paid RTN all amounts RTN was owed under the Services Agreement. In fact, as I explained in my October 30, 1998 letter, RTN was overpaid and owed the Cook Committee \$5,783.33.

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The charges which these invoices represent are not supported by the Services Agreement, no other agreement was made, and RTN instructed Cook to ignore these invoices because they did not reflect amounts owed by Cook and the Cook Committee. As explained in my October 30, 1998 letter, the reason that the Cook Committee's treasurer noted invoice numbers 96199 and 96200 on the checks was because RTN failed to submit invoices with many of its requests for funds and because she wanted to connect each payment made to RTN with an invoice from RTN.

Next, you requested whether invoice number 96184 was paid, and if so, when it was paid. Invoice number 96184 is dated July 29, 1996, and charged Cook and the Cook Committee for such expenses as postage, printing, catering and supplies. Although no check references this invoice, it was indeed paid with one or more of the following checks: 212, 215, 216, 217, 227, 232, 246, 252 and 263. As explained above and previously, Cook and the Cook Committee intended these checks to pay legitimate charges under the Services Agreement, including reasonable expenses. They did not intend these to pay RTN money not owed under the Services Agreement.

You also sought further information regarding the second paragraph of page five of my October 30, 1998 letter. This paragraph listed the invoices RTN has placed at issue in the dispute between it and Cook and the Cook Committee. You mentioned that starting with invoice number 96173 and including invoice numbers 96199, 96357, 96356, 96184, 96212, 96213, 96235, 96256, 96359, 96366, 97112, 96355, 96367, 96372 and 97106,² it is not clear when these invoices became in dispute and when these invoices were paid, if ever. These invoices became the subject of a dispute no sooner than January 16, 1997. Before that time, as we explained in a September 2, 1998 letter to you, RTN told Cook and the Cook Committee that at most, they owed \$37,441.66. On January 16, 1997, RTN sent the Cook Committee a letter alleging that Cook and the Cook Committee owed \$173,132.87.

Even then, however, Cook and the Cook Committee did not become aware of the particular invoices RTN claimed represented charges that were due and owing. In a January 20, 1997 invoice for allegedly owed finance charges, RTN identified invoice numbers 96173, 96200, 96212, 96213, 96235, 96256, 96355, 96356, 96357, 96359, 96366, 96367 and 96372 as containing overdue charges. Invoice numbers

² This list should have also included 96200, the invoice dated July 29, 1996, charging \$100,000 for "Consulting Fee for General Election."

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96184, 96199, 97106 and 97112 were not listed. It was not until October 10, 1997, that Cook and the Cook Committee learned of all the invoices placed at issue by RTN. At that time, RTN served upon Cook and the Cook Committee's counsel R.T. Nielson Co.'s Answers to Defendants' and Counterclaim-Plaintiffs' First Set of Interrogatories wherein it identified the amounts it contended it was owed and the invoices which sought such amounts from Cook and the Cook Committee. (Pertinent portions of these interrogatory responses are enclosed.) The information contained in the second paragraph on the fifth page of my October 30, 1998 letter was taken from RTN's response to an interrogatory.

The invoices which reflect amounts owed under the Services Agreement were paid by the Cook Committee. A number of the invoices which RTN contends represent amounts owed by Cook and the Cook Committee have no basis under the Services Agreement. As explained in my October 30, 1998 letter, invoice numbers 96199 and 96200 contain no legitimate charges. Checks from the Cook Committee to RTN which noted these invoice numbers were not intended to pay illegitimate charges.

Furthermore, most of the other invoices RTN has placed in contention also contain improper charges. Invoice numbers 96173 and 96356 purport to charge for get-out-the-vote calling. Pertinent evidence, however, suggests that RTN charged Cook and the Cook Committee for calls that it did not make, but which were made by Cook Committee volunteers. Thus, the total amount charged Cook and the Cook Committee is not proper.

Invoice numbers 96212, 96213, 96235, 96256, 96359, 97106 and 97112 include improper charges for expenses. Invoice numbers 96212, 96213 and 96235 evidence RTN's self-dealing. As explained in my October 30, 1998 letter, RTN was Cook's campaign manager and therefore owed fiduciary duties to Cook and the Cook Committee. In accord with these duties, RTN should have ensured that Cook and the Cook Committee obtained services at the best available prices. RTN should not have self-servingly dealt with Cook and the Cook Committee for its own pecuniary advantage. In invoice numbers 96212, 96213 and 96235, however, RTN charged for "in house" work and thereby engaged in prohibited self-dealing. Invoice number 96235 is also improper because, as discussed in my October 30, 1998 letter, it contained a \$184.90 charge for films and scans which had already been included in invoice number 96212.

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Invoice numbers 96256 and 96359 also contain double bills. As I explained in the October 30, 1998 letter, under the Services Agreement, RTN was compensated for time spent by its staff with the \$40,000 and \$4,000 per month consulting fees. Invoice numbers 96256 and 96359, however, charge Cook and the Cook Committee again for time spent by RTN's staff.

Invoice numbers 96355, 96367 and 96372 contain fundraising commissions which RTN was not entitled to receive. Under the Services Agreement, RTN was to receive 15% of contributions from political action committees that it solicited. In invoice numbers 96355, 96367 and 96372, however, RTN sought commissions or contributions from political party committees, including the National Republican Congressional Committee, the Utah Republican Party, the Salt Lake County Republican Party and the National Republican Committee.

Invoice numbers 97106 and 97112 charge Cook and the Cook Committee for expenses incurred and alleged services performed beyond the point authorized by the Services Agreement. The Services Agreement provided that after the general election, the only compensation to which RTN would be entitled was commissions on contributions received from PACs and only until March, 1997. Invoice numbers 97106 and 97112, however, include charges for office and equipment rent and phone use for months following the general election.

To the extent that the invoices placed in contention by RTN contain legitimate charges, such charges were paid by the Cook Committee with one or more of the checks which note invoice numbers 96199 and 96200.

Finally, you asked about Invoice number 96139. Specifically, you pointed out that this invoice, which charged \$7,175 for various expenses, was partially paid with a check for \$5,000 dated April 30, 1998, and you wanted to know if the balance of the invoice was paid, and if so, when and by what check number. Cook and the Cook Committee do not owe RTN for charges reflected in this invoice. As stated in my October 30, 1998 letter, this invoice contains improper charges for staff time and self-dealing. Even RTN apparently agrees that no more is owed on invoice number 96139. It has not placed this invoice at issue in the litigation between it and Cook and the Cook Committee, and no statement from RTN to Cook and the Cook Committee mentioned any balance left due and owing on this invoice. To the extent that any of the remaining \$2,175 was owed under the Services Agreement, such amount was paid before the general election. Cook and the Cook Committee paid RTN a total of \$229,657.21 by October 29, 1996. The most that RTN was entitled to

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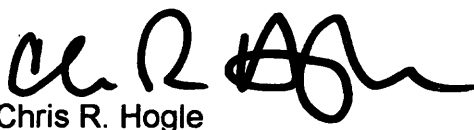
receive for services performed under the Services Agreement, however, was \$223,873.88. Thus, Cook and the Cook Committee paid all amounts owed under the Services Agreement and more.

In evaluating the Cook Committee's reporting of debts and payments to RTN, I hope you will keep in mind the difficulty which resulted from RTN's confusing billing practices. As outlined in my October 30, 1998 letter, RTN sent Cook and the Cook Committee invoices containing cryptic and vague descriptions, inaccurate descriptions, duplicate charges, charges for expenses incurred by RTN's other clients, and charges that either were not supported by the Services Agreement or were directly contrary to it. Such illogical, contractually unsupported and confusing billing practices illustrate the difficulty the Cook Committee encountered in reporting to the FEC its debts and expenditures to RTN.

For this reason, and also because of RTN's position of trust as campaign manager, Cook and the Cook Committee relied to a great extent on RTN to help calculate the debt owed to it. As we explained in the September 2, 1998 letter to you, given the confusing nature of RTN's billings and RTN's instructions to ignore certain invoices, the Cook Committee looked to RTN to help calculate debt to RTN. RTN told Cook and the Cook Committee that it would submit the amount of debt after the general election. In effect, RTN stated that Cook and the Cook Committee had no debt to RTN until it provided the amount of debt at the end of the campaign.

I hope this letter provides the information you requested. If you have any further questions, please call me.

Sincerely,



Chris R. Hogle

CRH/mjg
Enclosures

cc: Jay D. Gurmankin
Merrill Cook

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

R.T. NIELSON COMPANY, a Utah
corporation,

Plaintiff,

vs.

MERRILL COOK, an individual; and
MERRILL COOK FOR CONGRESS
COMMITTEE, a Federal Election
Campaign Committee,

Defendants.

MERRILL COOK FOR CONGRESS
COMMITTEE and MERRILL COOK,

Counterclaim-Plaintiffs,

vs.

R.T. NIELSON COMPANY, *et al.*

Counterclaim-Defendants.

**R.T. NIELSON CO.'S ANSWERS TO
DEFENDANTS' AND COUNTERCLAIM-
PLAINTIFFS' FIRST SET OF
INTERROGATORIES**

Civil No. 970904869CV

Hon. Sandra Peuler

contracted and/or requested and at no time during said performance did Cook contend otherwise. No other conditions, if any, were required of or applied to Nielson's performance and therefore none required either fulfillment or excuse.

INTERROGATORY NO. 67: Itemize and state the basis for the damages you claim in paragraph 36 of your Complaint, and describe how you calculated such damages.

ANSWER: The amount claimed was originally estimated and is hereby revised to the amount herein set forth:

<u>Item</u>	<u>Description</u>	<u>Invoice No(s).</u>	<u>Amount Unpaid</u>
<u>Convention Cycle:</u>			
1	Bonus	96145	5,000.00
2	Expense	96143/96144	<u>5,086.24</u>
3	Subtotal		\$ 10,086.24
<u>Primary Cycle:</u>			
4	GOTV Fee	96173	\$ 9,251.97
5	Bonus	96199	<u>5,500.00</u>
6	Subtotal		\$ 14,751.97
<u>General Cycle:</u>			
7	Bonus	96357	25,000.00
8	GOTV Fee	96356	12,318.67
9	Expense	96184/96212 96213/96235	16,055.98

		96256/96359 96366/97112	
10	PAC Commissions	96355/96367 96372/97106	28,761.43
11	Fee	96200	<u>84,000.00</u>
12	Subtotal		\$ 166,136.08
13	<u>Post Election</u>	97106	<u>11,508.70</u>
14	Total (Sum of Items 3, 6, 12 & 13)		\$ 202,482.99

Nielson reserves its right to further reconcile and/or revise its damage claim. The bases for this claim are set forth in Nielson's answers to Interrogatory Nos. 1-63, 65, 66, 71-74, and/or 77-80.

INTERROGATORY NO. 68: Itemize and state the basis for the damages you claim in paragraph 41 of your Complaint, and describe how you calculated such damages.

ANSWER: Objection - seeks information protected by the work product doctrine and calls for legal conclusion. Without waiving said objections, the amount claimed was estimated and is hereby revised to the amount set forth in Item 5 as set forth in Nielson's answer to Interrogatory No. 67. Nielson's aggregate claim for primary cycle services is set forth in Item 6 of its answer to Interrogatory No. 67. Nielson reserves its right to further reconcile and/or revise its damage claim. The bases for this claim are set forth in Nielson's answers to Interrogatory Nos. 1-63, 65, 66, 71-74, and/or 77-80.

21-04-405-2230

DATED this 10 day of Oct, 1997.



R.T. NIELSON COMPANY

Ronald T. Nielson
Ronald T. Nielson, President

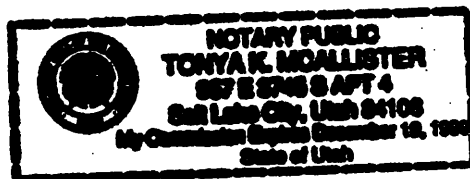
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On this 10th day of October, 1997, personally appeared before me, Ronald T. Nielson, who being first duly sworn, states that he is the President of R.T. NIELSON COMPANY, the signer of the foregoing instrument, that he has carefully read the foregoing Answers to Interrogatories in their entirety and that the contents contained therein are true and correct to the best of his personal knowledge, information and belief.

Tonya K. McAllister
NOTARY PUBLIC

Prepared by:

RICHARDS, BRANDT, MILLER & NELSON



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